

AMENDED IN ASSEMBLY APRIL 26, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2507**

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**Introduced by Assembly Member Gordon**

February 19, 2016

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An act to amend Section 2290.5 of the Business and Professions Code, to amend Section 1374.13 of the Health and Safety Code, and to amend Section 10123.85 of the Insurance Code, relating to telehealth.

LEGISLATIVE COUNSEL’S DIGEST

AB 2507, as amended, Gordon. Telehealth: access.

(1) Existing law defines “telehealth” as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site, and that facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers. Existing law requires that prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth inform the patient about the use of telehealth and obtain documented verbal or written consent from the patient for the use of telehealth.

This bill would add video—communications, telephone communications, email communications, and synchronous text or chat conferencing communications and telephone communications to the definition of telehealth. The bill would also provide that the required prior consent for telehealth services may be digital as well as oral or written.

(2) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits health care service plans and health insurers from limiting the type of setting where services are provided for the patient or by the health care provider before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee, insured, subscriber, or policyholder and the plan or insurer, and between the plan or insurer and its participating providers or provider groups.

This bill would also prohibit a health care provider from requiring the use of telehealth when ~~a patient prefers to receive health care services in person~~ *it is not appropriate* and would require health care service plans and health insurers to include coverage and reimbursement for services provided to a patient through telehealth to the same extent as though provided in person or by some other means, as specified. The bill would prohibit a health care service plan or health insurer from limiting coverage or reimbursement based on a contract entered into between the plan or insurer and an independent telehealth provider. The bill would prohibit a health care service plan or a health insurer from ~~interfering with the physician-patient~~ *altering the provider-patient* relationship based on the modality utilized for services appropriately provided through telehealth. *The bill would provide that all laws regarding the confidentiality of health care information and a patient's right to his or her medical information shall apply to telehealth services.*

Because a willful violation of the bill's provisions by a health care service plan would be a crime, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2290.5 of the Business and Professions Code is amended to read:

2290.5. (a) For purposes of this division, the following definitions apply:

(1) “Asynchronous store and forward” means the transmission of a patient’s medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) “Distant site” means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) “Health care provider” means either of the following:

(A) A person who is licensed under this division.

(B) A marriage and family therapist intern or trainee functioning pursuant to Section 4980.43.

(4) “Originating site” means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) “Synchronous interaction” means a real-time interaction between a patient and a health care provider located at a distant site.

(6) “Telehealth” means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers, ~~including, but not limited to, including video communications, telephone communications, email communications, and synchronous text or chat conferencing.~~ *communications and telephone communications.*

(b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain oral, written, or digital consent from the patient for the use of telehealth as an acceptable

1 mode of delivering health care services and public health. The  
2 consent shall be documented.

3 (c) Nothing in this section shall preclude a patient from receiving  
4 in-person health care delivery services during a specified course  
5 of health care and treatment after agreeing to receive services via  
6 telehealth.

7 (d) The failure of a health care provider to comply with this  
8 section shall constitute unprofessional conduct. Section 2314 shall  
9 not apply to this section.

10 (e) This section shall not be construed to alter the scope of  
11 practice of any health care provider or authorize the delivery of  
12 health care services in a setting, or in a manner, not otherwise  
13 authorized by law.

14 (f) All laws regarding the confidentiality of health care  
15 information and a patient's rights to his or her medical information  
16 shall apply to telehealth interactions.

17 (g) This section shall not apply to a patient under the jurisdiction  
18 of the Department of Corrections and Rehabilitation or any other  
19 correctional facility.

20 (h) (1) Notwithstanding any other provision of law and for  
21 purposes of this section, the governing body of the hospital whose  
22 patients are receiving the telehealth services may grant privileges  
23 to, and verify and approve credentials for, providers of telehealth  
24 services based on its medical staff recommendations that rely on  
25 information provided by the distant-site hospital or telehealth  
26 entity, as described in Sections 482.12, 482.22, and 485.616 of  
27 Title 42 of the Code of Federal Regulations.

28 (2) By enacting this subdivision, it is the intent of the Legislature  
29 to authorize a hospital to grant privileges to, and verify and approve  
30 credentials for, providers of telehealth services as described in  
31 paragraph (1).

32 (3) For the purposes of this subdivision, "telehealth" shall  
33 include "telemedicine" as the term is referenced in Sections 482.12,  
34 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

35 SEC. 2. Section 1374.13 of the Health and Safety Code is  
36 amended to read:

37 1374.13. (a) For the purposes of this section, the definitions  
38 in subdivision (a) of Section 2290.5 of the Business and Professions  
39 Code apply.

1 (b) It is the intent of the Legislature to recognize the practice  
2 of telehealth as a legitimate means by which an individual may  
3 receive health care services from a health care provider without  
4 in-person contact with the health care provider.

5 (c) A health care service plan shall not require that in-person  
6 contact occur between a health care provider and a patient before  
7 payment is made for the covered services appropriately provided  
8 through telehealth, subject to the terms and conditions of the  
9 contract entered into between the enrollee or subscriber and the  
10 health care service plan, and between the health care service plan  
11 and its participating providers or provider groups.

12 (d) A health care service plan shall not limit the type of setting  
13 where services are provided for the patient or by the health care  
14 provider before payment is made for the covered services  
15 appropriately provided through telehealth, subject to the terms and  
16 conditions of the contract entered into between the enrollee or  
17 subscriber and the health care service plan, and between the health  
18 care service plan and its participating providers or provider groups.

19 (e) The requirements of this section shall also apply to health  
20 care service plan and Medi-Cal managed care plan contracts with  
21 the State Department of Health Care Services pursuant to Chapter  
22 7 (commencing with Section 14000) or Chapter 8 (commencing  
23 with Section 14200) of Part 3 of Division 9 of the Welfare and  
24 Institutions Code.

25 (f) Notwithstanding any law, this section shall not be interpreted  
26 to authorize a health care service plan to require the use of  
27 telehealth when the health care provider has determined that it is  
28 not appropriate.

29 (g) Notwithstanding any law, this section shall not be interpreted  
30 to authorize a health care provider to require the use of telehealth  
31 ~~when a patient prefers to be treated in an in-person setting.~~  
32 ~~Telehealth services should be physician- or practitioner-guided~~  
33 ~~and patient preferred. it is not appropriate. Nothing in this section~~  
34 ~~shall preclude a patient from receiving in-person health care~~  
35 ~~delivery services.~~

36 (h) A health care service plan shall include in its plan contract  
37 coverage and reimbursement for services provided to a patient  
38 through telehealth to the same extent as though provided in person  
39 or by some other means.

(1) A health care service plan shall reimburse the health care provider for the diagnosis, consultation, or treatment of the enrollee when the service is delivered through telehealth at a rate that is at least as favorable to the health care provider as those established for the equivalent services when provided in person or by some other means.

(2) A health care service plan may subject the coverage of services delivered via telehealth to copayments, coinsurance, or deductible provided that the amounts charged are at least as favorable to the enrollee as those established for the equivalent services when provided in person or by some other means.

(i) A health care service plan shall not limit coverage or reimbursement based on a contract entered into between the health care service plan and an independent telehealth provider or ~~interfere with the physician-patient~~ *alter the provider-patient* relationship based on the modality utilized for services appropriately provided through telehealth.

(j) *Notwithstanding any other law, this section shall not be interpreted to prohibit a health care service plan from undertaking a utilization review of telehealth services, provided that the utilization review is made in the same manner as a utilization review for equivalent services when provided in person or by other means.*

(k) *This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.*

(l) *All laws regarding the confidentiality of health care information and a patient's right to his or her medical information shall apply to telehealth services.*

SEC. 3. Section 10123.85 of the Insurance Code is amended to read:

10123.85. (a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the health care provider.

1 (c) No health insurer shall require that in-person contact occur  
2 between a health care provider and a patient before payment is  
3 made for the services appropriately provided through telehealth,  
4 subject to the terms and conditions of the contract entered into  
5 between the policyholder or contractholder and the insurer, and  
6 between the insurer and its participating providers or provider  
7 groups.

8 (d) No health insurer shall limit the type of setting where  
9 services are provided for the patient or by the health care provider  
10 before payment is made for the covered services appropriately  
11 provided by telehealth, subject to the terms and conditions of the  
12 contract between the policyholder or contract holder and the  
13 insurer, and between the insurer and its participating providers or  
14 provider groups.

15 (e) Notwithstanding any other provision, this section shall not  
16 be interpreted to authorize a health insurer to require the use of  
17 telehealth when the health care provider has determined that it is  
18 not appropriate.

19 (f) Notwithstanding any law, this section shall not be interpreted  
20 to authorize a health care provider to require the use of telehealth  
21 ~~when a patient prefers to be treated in an in-person setting.~~  
22 ~~Telehealth services should be physician- or practitioner-guided~~  
23 ~~and patient-preferred. it is not appropriate. Nothing in this section~~  
24 ~~shall preclude a patient from receiving in-person health care~~  
25 ~~delivery services.~~

26 (g) A health insurer shall include in its policy coverage and  
27 reimbursement for services provided to a patient through telehealth  
28 to the same extent as though provided in person or by some other  
29 means.

30 (1) A health insurer shall reimburse the health care provider for  
31 the diagnosis, consultation, or treatment of the insured when the  
32 service is delivered through telehealth at a rate that is at least as  
33 favorable to the health care provider as those established for the  
34 equivalent services when provided in person or by some other  
35 means.

36 (2) A health insurer may subject the coverage of services  
37 delivered via telehealth to copayments, coinsurance, or deductible  
38 provided that the amounts charged are at least as favorable to the  
39 insured as those established for the equivalent services when  
40 provided in person or by some other means.

1 (h) A health insurer shall not limit coverage or reimbursement  
2 based on a contract entered into between the health insurer and an  
3 independent telehealth provider or ~~interfere with the~~  
4 ~~physician-patient~~ alter the provider-patient relationship based on  
5 the modality utilized for services appropriately provided through  
6 telehealth.

7 (i) *Notwithstanding any other law, this section shall not be*  
8 *interpreted to prohibit a health insurer from undertaking a*  
9 *utilization review of telehealth services, provided that the*  
10 *utilization review is made in the same manner as a utilization*  
11 *review for equivalent services when provided in person or by other*  
12 *means.*

13 (j) *This section shall not be construed to alter the scope of*  
14 *practice of any health care provider or authorize the delivery of*  
15 *health care services in a setting, or in a manner, not otherwise*  
16 *authorized by law.*

17 (k) *All laws regarding the confidentiality of health care*  
18 *information and a patient's right to his or her medical information*  
19 *shall apply to telehealth services.*

20 SEC. 4. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.